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\* SRI K. BHASHYAM :—“ Sir, I am glad the Hon. Minister has furnished these figures. I will go through the figures and continue my speech in the afternoon. It is now 1 o'clock. So we may adjourn now.”

MR. CHAIRMAN :—“ All right. The House will now rise for lunch and meet again at 2-30 p.m.”

The House then rose for lunch.

(After lunch—2-30 p.m.)

III.—ANNOUNCEMENT BY THE HON. CHAIRMAN.

ACT ASSENTED TO BY THE GOVERNOR.

MR. CHAIRMAN :—“ I have to announce to the House that the Madras General Sales Tax (Amendment) Bill, 1955 (L.A. Bill No. 4 of 1955), which was passed by the Madras Legislature on the 18th March 1955, received the assent of the Governor on the 31st March 1955 and has been published as Act No. VIII of 1955, in Part IV-B of the *Fort St. George Gazette*, dated 6th April 1955.”

II.—GOVERNMENT BILLS—cont.

(4) THE MADRAS COURT-FEES AND SUITS VALUATION BILL, 1954  
(L.A. BILL NO. 25 OF 1954)—cont.

\* SRI K. BHASHYAM :—“ Mr. Chairman, Sir, I was dealing with the question of expenditure on this administration of justice as disclosed in the budget. But I am countered by the Hon. Minister by pointing out that the Budget does not really represent the expenses incurred on account of the administration of justice. There are certain other items that will have to be taken into account. I was given three sheets of papers from which I have gathered this information. Receipts by way of court-fees and others come to about Rs. 1,41,61,000. What is said as expended on administration of justice comes to Rs. 1,89,78,000 and odd. Therefore it has been pointed out that there is a deficit of about Rs. 48 lakhs or Rs. 47 lakhs. This Rs. 1,89,00,000 and odd included 10 per cent spent on general administrative charges, and taken as share of ‘Administration of Justice’. This is nearly Rs. 20 lakhs. I submit that sort of item is wholly inadmissible for the purpose of calculating the amount spent for administration of justice. For one thing the general administration charges have been paid for by persons who resort to courts and if the Government debit it again to administration of justice, it would amount to debiting them twice over. We have paid the money for the purpose of general administration and got the benefit out of it. But again to take away 10 per cent of that and debiting it to administration of justice, I cannot understand as the proper sort of calculating the expenditure under administration of justice. Then, Rs. 20,00,000 have been debited to administration of justice on a 10 per cent basis. I take it that

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about Rs. 2 crores ought to have been spent on the general administration. How was this amount taken into account? Of the three crores and odd of people, if only 10 per cent resorted to the courts, then the number of litigants would be about 30 lakhs. Is that the assumption on which it is based? I do not understand on what other principle this figure could have been adopted. No such huge number of persons go to courts. If at all only  $\frac{1}{2}$  per cent of the general administration charges should be debited to administration of justice. I submit 10 per cent is too high a figure and wholly inadmissible. So far as stationery and printing charges are concerned, that too has been calculated on a 10 per cent basis."

THE HON. SRI C. SUBRAMANIAM :—" Only actuals are charged to administration of justice."

\* SRI K. BHASHYAM :—" Then I leave it at that. Another item debited to administration of justice is ' Civil courts buildings, interest on capital cost, maintenance and repairs ', etc. The amount debited is Rs. 5 lakhs. I submit, Sir, the buildings have been there for quite a good long time. To say : ' Interest on capital cost ', is it at the time the building was constructed or now? I do not see how it can be taken as money actually spent. It is not money spent out of our pockets. It is only an imaginary capital and interest paid on these and debited to administration of justice is not also amount paid out of our pockets. Therefore, these amounts also should go. They should not be debited to administration of justice.

" If these amounts are taken away, so far as I am able to see, the deficit will be only Rs. 25 to Rs. 30 lakhs in respect of administration of justice. As regards the pension of judicial officers, I have nothing to say. From my point of view, there is only a deficit of Rs. 17 lakhs and for the efficient administration of justice, this is not too much for the Government to contribute. There is no point in saying that ' there is no case for increasing the general taxation. We have only to increase the court-fee to meet the deficit '. I submit I have made out a case to my satisfaction—of course Government may not be convinced about my case but so far as the general public are concerned, they will be satisfied—that there is no need to increase the court-fees at all. The items that are now charged from other heads to the administration of justice are not generally thought of in respect of this matter. But Government want to charge them to administration of justice. Even taking them under administration of justice, the deficit will not be more than 20 to 30 lakhs of rupees. That is not too much for the Government to pay for the efficient administration of civil justice.

" In respect of this Bill, there is also one more thing to consider. In the calculation of the amount expended for administration of justice, the salary of the Sessions Judges and Assistant Sessions Judges is also taken into account. They are doing a lot of criminal work. They do not do much of civil work. All the year round or in



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almost all months they take up only sessions work. Therefore the entire amount should be charged to the criminal side and not to the civil side. If that is done, about 2 to 3 lakhs will go. Therefore to say 'we are spending more on the administration of justice' by producing figures regarding expenditure which are not generally admissible, is not a good argument for raising the court-fees. This is so far as the expenditure and receipts under administration of justice are concerned.

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" If the Government want that the services must be adequately paid for, we cannot really ask one man to pay for the services really obtained by another. A case might be disposed of very soon, another might take two days or three days and so on, but still pays the same money—then in that case, the principle the Government should adopt would be to levy a small token fee on the plaintiff and also charge a sort of hearing fee for every day till the case is heard and disposed of. This is the principle adopted in England. That is the principle which has been adopted in the Original Side of the High Court till recently. So much so a person whose case is pending for a long time, has to pay a higher fee. A person whose case is disposed of quickly has to pay a less fee. This principle has already been adumbrated even before the Select Committee which considered this Bill and two hon. Gentlemen, in their dissenting minutes, pointed out that, that was the proper principle. But the Hon. Minister thought that, that would work as a hardship upon the poor people. I do not know how it is so. The court-fee should be charged on the basis of the service rendered by the Judge. It should be based on the work done by the Judge in respect of a particular case of a particular litigant.

" Then I come to the uniform rate of *ad valorem* court-fee payable upon every suit. What will happen if a flat rate is adopted? It may not affect small litigants very much and they may gain some advantage, but it will affect big litigants. Originally no court-fee beyond Rs. 3,000 was paid for any class of suits. Rs. 3,000 was the maximum amount that was paid. If we levy a rate of  $7\frac{1}{2}$  per cent *ad valorem* on all kinds of suits, it will be oppressive and will work as a great hardship upon big litigants. For instance, a big zamindar who has been dispossessed of his landed property might not be able to file a suit and even if he files it, he will ultimately become a pauper. Therefore, I should say that this  $7\frac{1}{2}$  per cent *ad valorem* is not in the interest of the client nor it is in the interest of the Government itself from the financial point of view.

" The other question is how the *ad valorem* fee is to be calculated, in respect of the agricultural land. What is called 'market value' is prescribed for this purpose. Originally the market value was fixed as ten times the revenue assessment payable on the land. Now from ten times the revenue assessment it has been raised to thirty times the assessment on the ground that the value of the land has gone up, and therefore, one has naturally to pay a higher court-fee. My submission is that simply because the value of the

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land is supposed to have gone up, the court-fee also has to be raised. It is a wrong principle and the raising of the court-fee from ten times to thirty times is a big jump. It would be better if we really go slow in respect of this matter. It was suggested in the other House and also in the Select Committee that it should be a smaller figure. I do not want to dilate on this point still further.

“ Sir, the fixing of court-fees for suits is a very difficult matter. Certain suits come within a particular section of an Act or another section and it is a very difficult question to decide it. After all, the whole question depends upon the wording of a particular section and generally we the lawyers always quarrel over the wording of the section. If a person wants to file a suit and if he is asked to pay Rs. 10,000 as court-fee in the very first instance, he may not file it. Once he is assured of the services of a lawyer and the Court also permits him to pay only Rs. 10,000 in the first instance, he will be encouraged to file the suit and fight for his rights. What happens in the present Bill is this. Apart from the first Court deciding whether the court-fee payable is proper or not, a review can be made of the court-fee on an objection by the defendant. A further review can be made when the matter is again raised by an additional defendant. Then what happens is this. The matter may go on appeal to the High Court and the question whether proper court-fee has not been paid in the first case again may be considered. Besides the High Court has been given power to appoint a Court Fee Examiner who has to visit all the Courts in this State and find out whether a particular person has paid the right fee or not.”

THE HON. SRI C. SUBRAMANIAM :—“ That is in vogue.”

\* SRI K. BHASHYAM :—“ I know that it is not in vogue and it is rarely resorted to.

“ A person who has filed a plaint with a court-fee of Rs. 20 or Rs. 30 will be asked to pay another Rs. 100 by way of court-fee if it comes under some other section. It will work as a hardship if that person is asked to pay it again. Once a responsible officer—it does not matter whoever he is—decides the amount of court-fee payable for a particular suit, it must be considered as settled for all time and should not be raked up again. Otherwise, the litigant who goes to the court to fight for his rights will be harassed unnecessarily at every stage. All the time he should not be asked to pay more court-fee. This thing should not be there, because every time he will be having a feeling or an apprehension that he will be asked to pay additional court-fee at one stage or another. I hope the Government will look into that aspect of the matter.

“ Then, Sir, a new principle has been introduced which was not there before. A plaint has to bear a court-fee stamp according to the allegations mentioned in the plaint and once he has filed it, his business is over. Now a new principle has been added that if in a written statement any additional matter regarding title, etc., is raised, a further court-fee has to be paid. That is a thing which is somewhat new. To say that the plaintiff should pay additional

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court-fees on the allegations contained in the written statement is a thing which has not been accepted so far. Suppose a man sues upon a document of title. After all it is a paper and it may be worth Rs. 100 in value. Suppose the defendant comes and says that the lands which are represented by the document of title belong to him. As soon as he says that, an issue is framed in respect of that matter. Then court-fee should be paid by the plaintiff not upon Rs. 100, but upon the market value of the land. This will cause great hardship. There is uncertainty with regard to litigation, uncertainty with regard to court-fees and there is again uncertainty as regards the framing of the issue. Such things are found in more than one place in this Bill. Of course, we are all anxious to help the poor man. This is not in his interest.

“ So far as declaratory suits in respect of land are concerned, the minimum court-fee payable is Rs. 22-8-0. No man can walk into a court of law and file a suit in respect of any agricultural land saying that it belongs to him and that he is entitled to possession of it unless he pays Rs. 22-8-0, even though the land may be half a cent or one cent in extent and not worth Rs. 10. That is the minimum fee which has been provided for. Such a minimum has been provided for in the case of suits relating to easements also. In respect of suits relating to trust property, the minimum court-fee payable is Rs. 75 and the maximum is Rs. 200. After all it may be a small trust relating to some Pillayar temple and the market value of trust property may be worth Rs. 100. Still one must pay Rs. 75 as court-fee. Again in respect of suits for injunction and suits coming under the Specific Relief Act, a minimum fee has been provided. I feel that such minimum rates ought not to be there and they will cause considerable hardship to the poor client. Therefore, these minimum rates must go.

“ Another matter I wish to speak about is regarding the drafting. Of course, the market value is there and it has been defined as thirty times the assessment and all that. I would like to invite the attention of the House to clause 40 which relates to suits for cancellation of decrees. The clause says ‘ In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit ’. I would like to know whether it is the market value which is stated, or whether it is the market value according to the notional value prescribed in the Act. One would like to know what is meant by ‘ the value of the subject-matter of the suit ’. There is some ambiguity and this requires clarification. Otherwise, it will be difficult to decide the question. (The Hon. Sri C. Subramaniam : ‘ Clause 7 deals with it. ’) Clause 7 only deals with the determination of market value. In respect of agricultural land, it will be thirty times the assessment. In respect of a building, it will mean market

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value in the ordinary sense. But there the question of market value in the case of suits for cancellation of decrees has not been dealt with. So it requires some clarification.

“ Again in respect of suits under the Madras Survey and Boundaries Act, it is stated that the fee shall be computed on one-half of the market value of the property affected by the determination of the boundary or on rupees three hundred, whichever is higher. Fee computed on half the market value is provided for, for rectifying a thing for which the survey officer is responsible. It was only Rs. 10 in those days. This will also create hardship. I have not gone through all the clauses but as each clause is being taken up for discussion, I can point out such anomalies. Of course, it is not possible nor profitable to do so. On principle, there seems to be no rhyme or reason in respect of several matters. There is no necessity for such a Bill. If the Government are merely content with levelling up inequalities and removing ambiguities, then it will be all right. But they have sought to change the principle of taxation thoroughly. Therefore, I consider that this is an ill-advised measure.”

SRI A. GAJAPATHY NAYAGAR :—“ Mr. Chairman, Sir, the question of deciding the court-fee has always been a nightmare for Judges because there is nothing definite about it. But on broad general principles we adopted three notions, the assessment value, the market value and the notional value. I submit that court-fee matters can easily fall under any one of these three heads and, therefore, there will be no difficulty in computing the fee payable as per the provisions of this Bill. They have done one good thing. They have adopted a uniform rate in respect of *ad valorem* fees. They have also clarified the meaning of the expression ‘market value’. Of course, in the matter of assessment of court-fee, each individual case has to be assessed on its own merits. We cannot say generally that court-fee can be decided at one stroke. We may have one kind of court-fee prescribed and one value prescribed for all cases. But if you want to do justice, you must have these three heads, viz., assessment value, market value and notional value.

“ I would like to say one thing. The matter has been discussed at the Select Committee proceedings and we adopted one principle, viz., that the expenditure incurred on account of courts shall be commensurate with the income we get from the litigants. After all, litigation has become a luxury in certain cases. There must be one principle, which I submitted before the Select Committee also, namely, that the litigant who wants justice must pay for it. At the same time, I do not want to say that the suggestions put forward by my hon. Friend Sri K. Bhashyam should be lost sight of. Administration of justice is also a duty of the State. The Government have made ample provision for dispensation of justice on the criminal side, but when a man wants to enforce certain rights on the civil side and wants to take away public time and money, I say that he should pay for it. At the same time, I should say that we have made sufficient safeguards in the various provisions



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of the Bill that a man is not taxed more than what he has to pay for. Therefore I should say that this measure of taxation is quite reasonable and I welcome it."

3 p.m. \* SRI V. GURUNANDAN ROW :—“ Mr. Chairman, Sir, I rise to oppose this Bill. I agree with what my hon. Friend Sri K. Bhashyam has said. He has dealt with almost all matters, but I would like to deal with only three or four aspects of the Bill with particular reference to the question of principle. Sir, the Government are aware that the Hindu Religious Endowments Act was declared *ultra vires* by the High Court as well as by the Supreme Court. They pointed out that there was a difference between a fee and a tax. The sum and substance of their judgment was that the money that the Government collected for services to be rendered, could not go to the general funds and that the fee that was collected should have some co-relation to the services rendered whether compulsorily or otherwise. That was the main reason why the levy made upon the religious endowments was held to be *ultra vires*. The Hon. the Minister for Law has brought forward certain figures to show that about Rs. 19 lakhs is taken to be the charges of general administration. As far as civil litigation is concerned, what is happening is this. The figures given in the Budget show that all the court-fees paid go into the Consolidated Fund and it has nothing to do with civil litigation. I do not see any relation between the value of the subject-matter of a suit and the services the Government are rendering to a litigant who goes to a court. I support the plea made by my hon. Friend Sri K. Bhashyam that a fixed fee must be charged for every person who goes to a court. The Government may have different rates of court-fee on the basis whether a case is tried in the District Munsif's Court or in the Sub-Court or in the District Court. But there must be a fixed fee. This will completely obviate much litigation on what is the correct court-fee to be charged in a particular case. This will also save a lot of time of the Court in deciding whether the court-fee paid in a case is correct or not. The work in the courts will be simplified to a great extent. But, as my hon. Friend Sri K. Bhashyam has pointed out, a lot of complication is being created as a result of the provisions introduced in the new Bill and the question of what court-fee has to be paid has become a matter of interest not only to the plaintiff, but also to the defendant. As a result of passing this measure, litigation will be encouraged. There is no attempt at simplification of procedure at all. It is stated that this Bill has been brought forward to remove anomalies. On the other hand, I find that it has removed no anomalies at all. It has created so much complications that no lawyer will be in a position to say what is the proper court-fee to be paid in a case. It is stated that court-fee will be assessed on market value. Sir, market value may change. An enquiry has to be made as to what is the market value and this will take a lot of time. The court is being converted into a sort of tax office. It has to sit, watch and see whether proper court-fees have been charged or not.

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" Then, Sir, I come to criminal litigation. Criminal litigation is not a luxury. It is for the general interest and maintenance of law and order and to see that crime is put down, that the Government bring the accused before criminal courts. It has been provided in the Constitution itself that the opportunity given to accused persons must not be restricted in any way. They must not be compelled to pay court-fees for getting copies of deposition, etc. For the purpose of enabling them to defend themselves it is necessary that they should get free, or at least at a nominal cost copies of documents, etc. To-day, an accused has to pay five annas per page for a copy of a document. Can that not be removed? After all, only a sum of Rs. 5 lakhs is collected by way of such collections. I do not see any reason why the Government should not forego that amount. The Hon. Minister must know that most of the accused cannot afford to pay. So far as criminal cases are concerned, the accused are entitled to get all copies of documents free of charge.

" Then, Sir, I shall come to the fees charged for filing writ petitions. Originally, the Government stated in the Bill that a fee of Rs. 100 was to be charged on each petition to the High Court under Article 226 of the Constitution for a writ other than the writ of habeas corpus or a petition under Article 227 of the Constitution. At a Joint Select Committee stage, this fee was reduced to Rs. 25. When the Constitution came into force, only a fee of Rs. 2 was charged for a writ petition in the High Court. I know the Hon. Minister might say that as a result of the fee being very low a large number of writ petitions were filed. But I must bring to the notice of the Hon. Minister also that a number of writs were granted against the Government also. We cannot say that every writ petition is a frivolous one. I am concerned with the fundamental rights of the ordinary people and I am not concerned with the fundamental rights of propertied people. To-day they are making people to pay Rs. 25 for every writ petition filed in the High Court. To-morrow they may come forward with a measure before this House that one lakh of rupees should be paid as the court-fee for each writ petition. Rs. 25 means, according to our Indian standards, one month's earning. Is that a reasonable fee charged for the enforcement of the fundamental right guaranteed under the Constitution? I, therefore, suggest that the Government should go back to the original rate of Rs. 2 which is nominal. It is just a nominal fee to enter the court. I submit that Rs. 2 would be a proper court-fee on a writ petition and that Rs. 25 is certainly too large a sum for the ordinary man to pay.

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" The only other point I would like to mention is this. What is the objection of the Government to have the court-fee based upon the actual time taken by the court? I do not think it can have any effect on the budgetary situation. As my hon. Friend Sri K. Bhashyam stated in England there is only fixed court-fee. Even to-day in Bombay in the Original Side of the High Court only Rs. 25



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has to be paid for every plaint. Is it found in any way that the Bombay Government are losing any money by levying only Rs. 25? What is the objection for levying the same rate here? If I take the time of the court, I pay for it and to enter into a court I pay something depending upon a particular court. The Bill contains so many complicated clauses. According to the statement shown to me by the Hon. Minister, after all they expect to get only Rs. 8 lakhs out of the court-fees by this Bill. I think even that will have to be reduced. Because, previously in the Small Causes Court they used to levy 2 annas for the first Rs. 500 and thereafter one anna and now it has been made a flat rate of  $7\frac{1}{2}$  per cent. So, Government may lose something there. This Bill is raising a lot of difficulty. I am afraid, Sir, that some person with a big claim will come and say that it is unreasonable. Every lawyer of the Madras Bar Federation has opposed this Bill tooth and nail. They have told the Select Committee also that they are opposing the Bill on the basis of the principle followed and not because they are lawyers. They said that court-fee should be based upon the time taken by the court. With these words, I oppose the Bill."

SRI K. BALASUBRAMANYA AYYAR:—Having heard all the speeches of the hon. Members, I have to take a somewhat different line. Unfortunately the court-fee is a very difficult matter. The various principles upon which court-fee has to be levied have been discussed by the High Courts in our country and they have not come to any uniform decision on the particular matter. Long ago, the Privy Council said that court-fee legislation is after all a revenue bringing legislation. We must remember that in England in the beginning there was no institution fee at all. Here also when the Supreme Court was in Madras, there was no institution fee at all. The principle followed was that no court-fee should be levied for any litigation, civil or criminal. It is a general principle and any amount of deficit on the administration of justice does not matter at all. Therefore, they said that no court-fee at all should be levied. But unfortunately in this country in the year 1870 Henry Main who was one of the great Jurists introduced this legislation and in that he began to say that court-fee should be levied on market value in some cases, by assessment in some cases and so on. He said that peculiar conditions of this country necessitated the levy of court-fee. Unfortunately, Sir, we are now not writing on a clean slate. It would be well if some of those general principles are adopted now. But, after the Act of 1870, is it possible for us to go back? At any rate, the Government will not go back upon it. That is the difficulty which I feel and therefore, it is that we cannot press this matter too far, though it is logical. There are also certain other principles which have been accepted and everything has to be taken together for the purpose of deciding this matter. One principle alone cannot be pressed too far. The time taken by the courts has also to be taken into account. For example, in the Presidency Small Cause Courts Act, it is stated that if there is a settlement out of court, half the court-fee should be refunded. That is on the

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principle that more time is not taken when a matter is settled out of court. In cases where an *ex parte* decree is passed, there is not much of argument and the suit is decided immediately. In that case there may be a refund of half the court-fee. So, the principle of time taken by the court can be applied to some extent. But other things also should be taken into consideration.

"The State should never benefit by taxing one class of people, i.e., litigants. Sir Henry Main when introducing the Court Fees Act stated that it was not the intention of the State to benefit by taxing one class of people, viz., the litigants. Of course, it is not stated here that the Government want to benefit by taxing the litigants and I do not say so.

"The third thing is, litigation should never be made costly, so that the rich man can always harass the poor defendant. After all we must remember that court-fee paid is added in the costs and the defendant has to pay it, if the case of the plaintiff succeeds. Therefore, it is we have to remember that litigation should not be rendered costly.

"The fourth point that we should remember is, civil litigations are not merely for the enforcement of private rights only on account of the general law, but also on account of the very many statutes that are introduced. Many cases are about procedural matter. There are many cases about limitation, about contracts, about insolvency proceedings and so on. There are also many cases about the constitutional points now after our Constitution came into force. Statutes are growing in number every day. Every day legislation is going on. On account of honest interpretation of statutes, we have to go to court. In fact Government welcome any particular decision which makes a particular section or legislation clear. After all the legislators cannot visualise all the points that can be raised under a particular legislation. Therefore, Government have to take into account all these things and it is very difficult. In the complex system of our civilization now and when there are a large number of controls also by the Government on many matters, necessarily there is a larger amount of litigation. So, civil litigation need not be merely for enforcement of private rights and so, we cannot ask 'Why should the State be paid for it?' All these arguments are generally right so far as they can go, but not to the full extent. That is what I want to observe on all these general matters which were discussed by my hon. Friends here.

"So far as the Bill is concerned, all these aspects and principles have not entirely been taken into consideration. For every thing court-fee has been increased. I do not think that even the mover of the Bill with his conspicuous ability to argue can maintain that court-fee has been rendered easier. Court-fee has been increased on all aspects. Is it right? That is the point before us. Is it right that we should make litigation costly for all classes of people? We must take the nature of the suit and time taken by the court into consideration for the purpose of fixing the court-fee.



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In this particular Bill I find all those matters have not been taken into consideration. For example between the 1870 Act and the present Bill there is a wide difference so far as the market value of house-sites and land is concerned. In this country there are a lot of agricultural lands. When for the purpose of other matters we say that agriculturists cannot even pay their debts and when moratorium is introduced, we cannot assume that they will be able to pay the court-fees. Therefore, so far as the market value of agricultural land is concerned, it is better not to take the assessment into consideration. It may be said that the land value has increased. It may or may not be so. If we introduce land reforms, the value of the land may decrease very much. That is a thing which cannot be considered now. But many of the agriculturists are poor. Their land right is a valuable right. Therefore, on principle, when they want to enforce that right, it is better not to tax them too much in the form of court-fee. That is the general principle for which the assessment should be taken into consideration rather than the market value. That is why I say that so far as agricultural lands are concerned, there must be this difference. I am glad that that difference has been maintained by the Government in the Select Committee. Therefore, I feel that the assessment should be the factor to be taken into consideration and not the market value.

"I have given notice of some amendments and they have got to be moved. I shall talk about other matters when those amendments are moved. There are certain clauses about which we may want to say a few words although we may not have actually given notice of any amendment. If you put all clauses for which there is no amendment together, we may not be able to speak. It is a submission I want to make."

MR. CHAIRMAN:—"Let the hon. Member just give me an indication at the appropriate time and I shall allow him to speak."

SRI K. BALASUBRAMANYA AYYAR:—"In regard to a particular clause, we may feel that that clause ought not to be there at all. This is a matter which affects large numbers of people. Therefore, it ought to be discussed thoroughly so that all points of view may be put forward before the Government. I do not say that the Government have not looked into all the points. But they have considered one point of view, namely, increase in revenue. But whether that one point of view alone has got to be considered has to be investigated."

SRI A. M. ALLAPICHAJ:—"Mr. Chairman, Sir, to-day's discussion on the Bill has been really very interesting. When I heard the speech of my hon. Friend Sri K. Bhashyam, one of our most learned advocates in the State and one of our biggest advocates in the country, I thought he was fast becoming a revolutionary. That view was confirmed when he was supported by the hon. Member opposite Sri Gurunandan Row. The hon. Member opposite said that civil litigation was a luxury. Litigation involved a waste of time, according to him. So, what was in his mind was that

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all these civil litigations arose only because of property and personal rights. So, he thought that the best thing would be to abolish all these rights, that is, all the properties. Though he had not put it in so many words, the significance of his argument that civil litigation was a luxury in which rich people indulged was that. To abolish litigation, there must be abolition of private property. Perhaps, this was working in his mind. I may be right or wrong in my inference. Perhaps my hon. Friend Sri K. Bhashyam fell into that trap. On the other hand, as I have always maintained, the Congress Government have always been attempting to follow a middle path. They do not go to this extreme or that extreme. If some rich men have money, let that money be utilized for the benefit of the poor. Now, the plaintiffs who go to the court generally happen to be rich people and they can afford to spend some money. When the court gives a decree against the defendant, it is easy to know that he was in the wrong. So, the plaintiff brings forward a suit against the defendant, the wrong-doer. Now, the money which the plaintiff spent is collected from the defendant. In a way, therefore, he is punished. Just like a fine imposed on a criminal, he is punished. That money is not taken by any party but it goes into the coffers of the Government and is utilized for the good of the people. We have to bear that in mind.

“No doubt, there is a lot of force in the argument of the hon. Member Sri Balasubramanya Ayyar that litigation must be free or cheap. Certainly, it must be made as cheap as possible. If it can be done, well and good. But it is not possible now. Only because the Government feel that it is not possible, they have come forward with this Bill. The object of the Government and the Party to which the Government belong is to establish in this country a socialistic pattern of society. Therefore, they are moving gradually and cautiously and at the same time, without unduly affecting the interests and property rights of the persons concerned. If hon. Members should say that litigation must be made free, why not we go one step further and say, ‘When a lawyer is appearing for the plaintiff and when some other lawyer is appearing for the defendant, both the people must be paid by the Government’? (Interruption.) If we go on like that, then we would say that education must be made free and all other things must be made free. Then, the Government may say, ‘We shall do everything possible. Place all your property in our hands. We shall manage the whole thing. We shall give you food and clothing without your doing any work.’ Therefore, I think consciously or unconsciously we are getting into a trap. In ‘The Fall of the Roman Empire’ Gibbon has said that so long as our State is not Communistic, even the people who spend money on wrong things are doing some good service because money thereby gets distributed. Applying that argument here, litigation means to the extent to which money gets out of one’s pocket as court-fee is paid money gets distributed.

“That is what Gibbon said long ago. I think the Government are quite right in bringing in this measure. As a matter of fact, Sir, I cannot speak on this Bill with any amount of authority



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because almost all my life I have spent in criminal courts defending criminals. Whatever that may be, I think the Government have adopted certain definite principles taking into account the existing circumstances. Therefore, I feel Mr. Bhashyam's argument should have come in handy for Mr. Gurunandan Row to attack the Bill. I think Mr. Row has had a new convert to his views.

“ Then, Sir, when we lawyer's speak, our friends feel that we support or attack a thing out of a selfish motive. Certainly not. If there is any group of men in the world who can be considered selfless from the point of view of individual interests, it is the lawyers. They will defend the whole world without defending themselves. They defend the worst criminal and many others. But they cannot defend their own interests and they have not defended their interests. They could never combine to defend themselves and so it is not fair to say that they support this or support that because they have their vested interests. When a lawyer takes up a case, he does his work loyally whatever the consequences be. It is a loyalty which is rarely found in any other profession. It is not a joke. I am putting this with all the seriousness that I can command. There is no other profession—except perhaps the medical profession and the army—which does its work with so much devotion. The doctor and the soldier on the battlefield do their work with devotion. Therefore, what I say is this. Lawyers have to be respected. Some kind of feeling is gaining ground that lawyers are not required. Do you know where lawyers are not required? They are not required in countries where liberty does not flourish. Only there they are not required or respected because they have always stood against tyranny. The freedom the world enjoys to-day has come out of the endeavours of great lawyers from time immemorial. Perhaps people have forgotten or not realised this fact. They have done the greatest possible good to the people.”

THE HON. SRI C. SUBRAMANIAM :—“ Mr. Chairman, Sir, the points of view put forward by the hon. Members, Mr. Bhashyam, Mr. Gurunandan Row, Mr. Balasubramanya Ayyar and, to a certain extent, Mr. Gajapathy Nayagar were expressed even before the Select Committee. Only after a full consideration of all these points of view, the Select Committee took a decision and the Bill was passed by the Assembly. The Bill is before this House in the form in which it was passed by the Assembly. Therefore, I do not propose to make any reply in detail to the points made here, except of course a few interesting points which were raised, especially by Mr. Gurunandan Row and my hon. Friend, Mr. Bhashyam. Mr. Gurunandan Row seems to think that there is the danger of this piece of legislation being held *ultra vires* on the ground that this is not a fee but a tax. I am not quite sure about it. If the existing Court Fee Act is good enough, then this Bill also should be good enough. If the existing Court Fee Act itself was held to be *ultra vires* of the powers of this Legislature, then I could doubt the validity of this measure. But it has not been declared so and so far nobody has canvassed this point before the courts, even though there are eminent lawyers like

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Mr. Gurunandan Row. Even though rich persons have been called upon to pay thousands of rupees as court-fee, they have not raised this point. Simply because they are called upon to pay such fee, it cannot become tax. That is not the test to be applied here. There are other tests. Unfortunately the Hindu Religious Endowments case was referred to here. That was a different thing altogether. The subject-matter of the case was outside the scope of the Government's administration. Ordinarily, the Government have nothing to do with the administration of religious endowments. They have only taken over the superintendence of the endowments. For the purpose of meeting the cost of such superintendence, a fee was levied. But the administration of justice, as has been pointed out by Mr. Bhashyam, is one of the essential services which the Government have to render to society. Therefore, there is no question of any outside thing coming in for the supervision of which a fee is charged. So, that test cannot apply here.

"The only other question is whether the fee should be commensurate with the services rendered in respect of each case or the administration of justice as a whole. We must find out whether the Government are attempting to get any revenue out of this over and above the expenditure incurred or merely getting what they are just spending. If it is a question of loss, we need not worry about it. If it is a little more than what we spend, then the courts are not going to say anything because it is just one lakh or two lakhs of rupees more. They will say anything only if the fee is so disproportionate as to have nothing to do with the services rendered in dispensing justice. Therefore, I do not think each item should be taken into account separately for the purpose of finding out whether we charge the fee properly. I am of this view, subject of course to the views that the courts may hold. If they hold a different view, then there is time enough to consider the position.

"Then, Sir, Mr. Gurunandan Row, supported in a way by Mr. Bhashyam, said that the fee should be based on the time taken by the court to dispose of the particular case. I would request hon. Members to realise and ponder whether it is possible at all to accept this suggestion especially in the case of mufassal courts. I think it is absolutely impossible to accept it. There are easement suits, injunction suits and other small suits relating to land which easily take three or four days for their disposal. Now we have provided for a fee of Rs. 22-8-0 for such suits. If the suggestion of the hon. Members is accepted then in respect of such small suits much more fee may have to be levied. If they are to be charged fee with reference to the time taken, then it will be at least Rs. 100. That will be the minimum fee leviable in such cases. This system cannot work at all in our country and it is not worthwhile attempting such a system simply because we want to be logical about it. It will create more difficulties.

"Then, Sir, Mr. Bhashyam attempted to say 'why not include stamp duty you are collecting on documents?' If this argument



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had come from a layman, I could understand it. But a very great lawyer and legislator coming forward with this suggestion, I cannot understand. This is court-fee and that is duty. Duty is a tax. There is distinction between duty and fee. As far as the Constitution is concerned, they have laid down in the Constitution what are all the taxes which a State can levy. Stamp duty is one tax which the State can levy. Suppose a property is being sold. In the transaction of sale, the stamp duty is levied. For the purpose of possession, the title of the document is necessary. The document becomes effective only when the required stamp duty is paid and necessary stamps affixed. Tax is a different thing from fee. That has been accepted by all. It is on that basis that I say we cannot club court-fee and stamp duty. Whereas if it is a fee, it should be commensurate with the service rendered, in the case of a tax that need not be the case. So we cannot club stamp duty with court-fee and make them pay for the administration of justice. With great respect to my lawyer friend, Mr. Bhashyam, I regret I cannot accept what he had said, viz., to club stamp duty and court-fee. As a learned lawyer, Mr. Bhashyam had put forth all points of view. Of course lawyers put forward in courts all possible arguments. Mr. Bhashyam has not made exception to that even in the Legislature. He has put forward all points of view and has tried to put the facts of the case in all its aspects, just as he would put forward all arguments before the judge when arguing a case in the court. I may tell him there is no similarity between stamp duty and court-fee. Those two cannot be clubbed together for the purpose of meeting our expenditure on the administration of justice. I have already proved by figures how under the head 'Administration of Justice', we are now having a deficit. But hon. Members seem to think litigation should be made cheap and should not be made costly. I do agree with all those theories; but the function of the State is not merely to administer justice and not merely to keep law and order. As a matter of fact in a Welfare State, developmental activities are more important. Education, health, ensuring proper living conditions for the people—these and other social services for the benefit of the people are considered to be far more important than merely administering justice and keeping law and order. Therefore you cannot dissociate one from the other. For the purpose of providing the people with the social services outlined above, Government do need money. That is why taxes are levied. After all Government cannot get money from somewhere else. We get it from the people and then spend it for the people. That is the principle involved. Therefore if you say that court-fees should not be increased, then we have to get some more money from the general tax-payer for the purpose of meeting the deficit under the head 'Administration of Justice'. Is it right for the purpose of subsidising litigation that I should tax the general community a little more and thus meet the deficit? I do not think anybody would agree to the taxing a little more of the general community and that too for the purpose of subsidizing litigation. Hon. Members may find that even though originally I anticipated a revenue of Rs. 50 lakhs from this Bill for the Composite State (after

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partition, leaving out Andhra, we may get Rs. 25 to 30 lakhs), in the present Bill, as it is now before us, we have made increases in the court-fees only here and there. We have not at all effected any overall increase. And what is the money that we hope to get from this Bill? Hardly seven or eight lakhs of rupees. Therefore even after this Bill is passed and comes into effect, we would be getting only seven or eight lakhs of rupees. I am not considering this as a revenue measure but merely a revision of the Court Fee law. Incidentally we may get some money. Considering the dearness allowance paid to all the Government servants working in the courts and considering the general expenditure involved in the administration of justice, I do not think the sum of rupees seven or eight lakhs which we would be getting by way of this Bill, could be considered as a great income. It only amounts to 8 per cent. As against rupees one crore we are spending, this slight increase amounts to only 8 per cent. I do not think it could be said to be a large increase or heavy increase. Of course if you take one item here and there, the fee prescribed may appear big. But as Mr. Balasubramanya Ayyar said you should look at the entire aspect of it. What is the increase effected? It is 8 lakhs of rupees as against rupees one crore we are spending under the head 'Administration of Justice'. It comes to only 8 per cent. Are we not justified to have this 8 per cent increase now, when we take into consideration the present change in money and property values as against the pre-war level. I do hope that nobody could object to it. With these words, Sir, I hope the House would give its approval to this Bill."

MR. CHAIRMAN :—" The question is—

' That the Madras Court Fees and Suits Valuation Bill, 1954 (L.A. Bill No. 25 of 1954), as passed by the Assembly, be taken into consideration.' "

The motion was carried and the Bill was taken into consideration.

Clauses 2 to 6 were put and carried.

#### Clause 7.

SRI K. BALASUBRAMANYA AYYAR :—" Sir, I move the amendments standing in my name, namely,—

' In sub-clause (2), (a) for the word " thirty " substitute the word " twenty ".

In sub-clause (2) (d) (i) and (ii), for the word " thirty " substitute the word " twenty ".

In sub-clause (2) (e) and (f), for the word " thirty " substitute the word " twenty ".

I want that instead of the words ' 30 times ', the words ' 20 times ' may be substituted. This was also mentioned in the Select Committee. I do not want to expatiate on this subject. We have already discussed this question. My point is so far as agricultural property is concerned it is better to levy the fee at 20 times the revenue assessment and not 30 times. Because of the various aspects



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involved in the field of agriculture, the market value of the land may not be high. Market value alone should not be taken into consideration. Majority of agriculturists are poor. Even if you get a decree, you cannot execute the decree so far as these agriculturists are concerned, because they have not the wherewithal for it. They are poor. That is why I say my amendment fixing the fee at twenty times the annual assessment and not thirty times may be accepted."

The amendments were duly seconded.

THE HON. SRI C. SUBRAMANIAM :—" I do appreciate the point of view put forward by Sri Balasubramania Ayyar. But the Advocates' Federation who gave evidence were agreeable to have it at 50 times the annual assessment. That is what the Federation told us as a matter of fact. After a full discussion in the Select Committee, it was agreed to have it as 30 times the annual assessment. Therefore I do not think it should be further reduced. After all there should be some limit. Therefore I would request Mr. Balasubramanya Ayyar not to press his amendments."

SRI K. BALASUBRAMANYA AYYAR :—" I am not pressing, Sir."

Clause 7 was put and carried.

#### Clause 8.

SRI K. BALASUBRAMANYA AYYAR :—" Sir, I move the amendment standing in my name, namely,—

' Omit the word " set off or " . '

I want the word ' set off or ' to be omitted. So far as counter-claim is concerned, it is all right. I do not object to what is said with regard to counter-claim. But with regard to set off, it is not the case. For the amount due to a plaintiff from the defendant, a decree may be issued against the defendant. If it is a set off, the decree should be only for the amount of difference. But here it is said that the fee shall be chargeable in the same manner as a plaint. That is you fix the fee on the final amount. What I say is the fee should be chargeable only on the amount of difference. Therefore I think it is better to omit the word ' set off or ' . "

The amendment was duly seconded.

THE HON. SRI C. SUBRAMANIAM :—" The point for consideration is this. The plaintiff comes forward with a suit on a certain cause of action and says certain amount is due. The defendant on a different cause of action says that the plaintiff owes him money and this should be set off to meet the cause of action on which the plaintiff has sued. Therefore it is a trial of two suits. As a matter of fact one suit is on the cause of action in favour of the plaintiff while the other is on the cause of action in favour of the defendant. So under these circumstances, I do not think we could agree to the deletion of the words ' set off or ' . As a matter of fact even now when I claim a suit, I have to pay court-fee for my defendant also."

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MR. CHAIRMAN :—" The question is—

' Omit the word " set off or." ' "

The amendment was lost.

Clause 8 was put and carried.

Clauses 9 to 11 were put and carried.

Clause 12.

SRI B. BALASUBRAMANYA AYYAR :—" Sir, I move the amendment standing in my name, viz., 3-51 p.m.

' Add the following proviso to sub-clause (1) :—

*" Provided that there shall be no review or further review in pure questions of facts relating to the valuation."*

Sir, the Courts may have power to review the question of court-fee at any time they like. But, I only wish to point out that so far as questions of facts relating to the valuation are concerned there should be no review or further review. There should be some finality at some stage or other in respect of question of facts."

SRI MOHAMED RAZA KHAN :—" I second the amendment Sir."

THE HON. SRI C. SUBRAMANIAM :—" Sir, it all depends upon the importance of the issues involved. Even if they were questions of facts, sometimes they make a large difference and it also happens that even in respect of questions of law, they make very little difference. As far as I am concerned, what I want is that proper court-fee should be paid and honest people should not be penalised. If some dishonest people withhold certain facts, the courts must have power to look into those facts and ask them to pay the correct court-fee. They should not be left free. So, it cannot be said that the courts cannot go into such cases at any stage. If a person cleverly hides certain facts, should not the court have power to ask him to pay the correct court-fee at a later stage when those facts were found out? As a matter of fact, everybody should have an equal chance. We should not put a premium on dishonesty and non-disclosure of facts. That is why we say that at every stage it should be possible to review the question of payment of court-fee. An honest person will always give the facts honestly without disclosing anything and will pay whatever court-fee is payable. But, when a dishonest person fails to disclose all the facts and wants to pay as less as possible and hides as many facts as possible, I do not think we can give the advantage to the dishonest person. As a matter of fact, the hon. Members may be aware that in certain cases, some relevant facts will not be disclosed by the parties and those facts will come to light later on. When they come to light at a late stage, the entire aspect of the case will be changed. It is only to cover such cases, we have provided for the review of this question at every stage. It is not as if all the clients will be affected or all



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of them will come under this clause. It is in respect of one in thousand or one in two thousand cases, this provision will be applied. So I do not think that this should be taken exception to."

SRI K. BALASUBRAMANYA AYYAR :—" Sir, I am not objecting to the court's reviewing such cases. They can do it at any time they like if it is a question of law. I am only saying that if it is only a pure question of facts, it need not be reviewed and further reviewed. Even according to the Civil Procedure Code, where a matter relates purely to facts, it is not to be taken in appeal over and over again. If there was to be review even in respect of pure questions of facts, I am afraid matters relating to court-fees alone will loom large in all the courts. The courts will have to divert all their attention to those matters and will have no time to attend to other matters."

THE HON. SRI C. SUBRAMANIAM :—" Sir, the hon. Member's amendment does not refer to appellate courts. It only says, ' Provided that there shall be no review or further review in pure questions of facts relating to the valuation.' This relates to the same court also. I am sorry I will not be able to accept the amendment."

MR. CHAIRMAN :—" The question is—

' Add the following proviso to sub-clause (1) :—

" Provided that there shall be no review or further review in pure questions of facts relating to the valuation." "

The amendment was lost.

Clause 12 was put and carried.

Clauses 13 to 17 were put and carried.

Clause 18.

SRI K. BALASUBRAMANYA AYYAR :—" Sir, I move the amendment standing in my name, viz.,

' Omit sub-clause (2) and renumber sub-clause (1) as clause 18.'

" Sir, I am not in favour of this clause at all. The High Court appoints the Court-fee Examiners. They are given power to inspect the records of Subordinate Courts and also to raise the question in any court at any time in respect of a suit that may be pending. It is also said in this clause that it shall be lawful for the court to review an early decision given by the court on the same question. So, the courts will have to concentrate all their attention upon court-fees only and not any other matter. It is said in sub-clause (2), ' Questions raised in reports submitted by such Court-fee Examiners and relating to any suit, appeal or other proceeding pending in a court shall be heard and decided by such court . . . . Such a provision may be alright in the 1870 Act. But so far as this particular Bill is concerned, it is not quite right to have such a provision in it. I do not think it is really necessary that the Court-fee Examiners

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should have the power to raise a particular point in respect of a pending appeal at any stage. It may be that they may suddenly raise any point in respect of a pending appeal and it shall be lawful for the court to review an earlier decision given by the court on the same question. By having such a provision, we will unnecessarily be complicating matters relating to court-fees and much of the time of the courts will be taken up to consider these matters only and no other matter.

The amendment was duly seconded.

THE HON. SRI C. SUBRAMANIAM :—“ Sir, this is nothing new. As a matter of fact, the system of Court-fee Examiners is in vogue even now. They are experts in the law of court-fees and they scrutinize pending suits and pending appeals and then submit what are called, ‘ court-fee slips ’. Then notice is issued to the parties. The courts hear them and also go through the court-fee slip submitted by the Court-fee Examiners and then give their decision. Such a procedure is absolutely necessary. After all, the courts will only be aware of facts which are placed before them by the parties. It is not as if there is any other third party interested in the matter. The Court-fee Examiners have other sources of information to find out whether the correct fee has been paid and whether all the facts have been given by the parties concerned. For instance, they can find out the correct position from the revenue authorities. It may be that two parties may collide purposely and undervalue a certain property and may not give the full facts relating to the property. Suppose the market value of a house in the City of Madras has to be fixed and full facts are not disclosed. The parties concerned may give the value of the house very low and on this basis they might have paid a certain court-fee. Now, when the Court-fee Examiners were able to get information that the property was situated in a very prominent locality and the market value of the same will be twice or even thrice the one given by the parties concerned, should not the court have power to ask the parties concerned to pay an additional court-fee? There may not be many such cases. As was pointed out by an experienced person who had been a Judge—Sri Gajapathi Nayagar—the percentage of such cases may be only 4 or 5. These will be only very rare cases. It is only to regularize a system that is already in vogue, we have incorporated such a provision. So, there is nothing wrong in having it.”

MR. CHAIRMAN :—“ The question is—

‘ Omit sub-clause (2) and renumber sub-clause (1) as clause 18.’ ”

The amendment was lost.

Clause 18 was put and carried.

Clauses 19 to 23 were put and carried.



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## Clause 24.

SRI K. BALASUBRAMANYA AYYAR :—" Mr. Chairman, I move the amendments standing in my name, viz.,

' Omit sub-clause (2) (a).

*In sub-clause (2) (b), omit the words " where the plaintiff's title to the money or the property secured by the document is not denied ".*

" Sir, there are suits for possession of documents of title. For example, there may be suits for the purpose of getting possession of a promissory note.

" The party brings in the suit only for the recovery of the document and not the property conveyed by the document. The defendant might say: ' No, no. It is mine. It is not yours ' and all that. The court can merely say, ' if you prove that the document is yours, you may take it '. So far as the recovery of the money is concerned, it is a different matter and the party concerned may bring in a suit on that particular matter. So far as title is concerned, the Court Fees Act of 1870 does not take the market value into consideration. Whatever value the plaintiff puts in his plaint is accepted, because after all he wants to recover possession of the document. Where there is no denial of the title, the clause accepts the value put on the plaint. But where there is a denial, it is then valued at one-fourth market value. This is a departure from the original principle laid down in the Court Fee Act of 1870. I only want that the Government should conform to the original principle. Whenever there is a suit for recovery of document, there is no question of denial of title by the defendant and so far as the plaintiff is concerned he is concerned with the recovery of the particular piece of paper on the ground he has a right to possess it. That is the only thing that has got to be decided. The court need not ask the plaintiff to bring a suit for the recovery or possession of the property or enforce his right of possession over the property. That is my submission, Sir."

SRI MOHAMED RAZA KHAN :—" I second the amendments, Sir."

THE HON. SRI C. SUBRAMANIAM :—" Sir, the point involved is this. In section 24 (2) what is stated is: ' In a suit for possession of documents of title, fee shall be computed on one-fourth of the amount or of the market value of the property secured by the document '. The point is this. If it is merely a claim as of right that he is entitled to it and property is not disputed at all, then he is of right entitled to the document. Then the other issues do not arise. He can value as he likes. But incidentally if the title with reference to the property involved in that document is to be raised and decided, then one-fourth of the amount of the market value has to be paid as court-fees, since the greater question of title to the property itself has got to be decided. Of course where the document itself is in favour of a certain person and that person claims it,

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on the face of it the other questions do not arise. But where certain documents are claimed by right of succession saying: 'I am the heir. The property secured by the document should go to me and not to the other person. He is not entitled to it', then the entire thing will have to be litigated upon and issues framed. Then the questions will have to be discussed. There we cannot leave it to the plaintiff to value it as he likes. At least one-fourth of the amount or of the market value of the property secured by the document should be paid as court-fee. I do not think any hardship will be caused on account of this."

MR. CHAIRMAN :—" The question is—

' Omit sub-clause (2) (a). ' "

The amendment was lost.

MR. CHAIRMAN :—" The question is—

' In sub-clause (2) (b), omit the words " where the plaintiff's title to the money or the property secured by the document is not denied " . ' "

The amendment was lost.

Clause 24 was put and carried.

Clauses 25 to 68 were put and carried.

#### Clause 69.

SRI K. BALASUBRAMANYA AYYAR :—" Mr. Chairman, Sir, I move the amendment standing in my name, namely :—

' Add the following before the Explanation :—

" Where any suit is decreed *ex parte* or comprised or withdrawn or referred to arbitration before evidence has been recorded on the merits of the claim, half the amount of all fees paid in respect of the claim or claims of the suit shall be ordered by the court to be refunded to the parties, by whom the same have been respectively paid. ' ' "

SRI MOHAMED RAZA KHAN :—" I second the amendment, Sir."

SRI K. BALASUBRAMANYA AYYAR :—" Mr. Chairman, Sir, this chapter deals with refund of court-fee. This is a very important chapter. There are many points mentioned there where refund of court-fee can be given to the party concerned. By my amendment, I am only seeking to give effect to the principle that the time of the court has not been taken on account of the fact that the suit has been decreed *ex parte*, or is compromised—not out of court—or referred to arbitration before evidence has been taken. This is accepted even in the Presidency Small Cause Court. In these cases, the court has nothing to look into and half of the fees paid by the party should be refunded."



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THE HON. SRI C. SUBRAMANIAM :—“ Mr. Chairman, Sir, this clause as it stands relates to cases : ‘ where before the evidence is taken on the merits of the claim, the case is settled out of court and such a settlement is reported to the court ’. So much so, the court has nothing more to do with that. That is the case involved in this clause. The hon. Member wants that to be extended to other cases also. It is not merely with reference to the time taken with regard to the passing of the decree but the execution of the decree later on which is more difficult than even getting a decree. In our country, in all these cases not merely the time taken for trial and passing of the decree should be taken into consideration but also the time taken with reference to the execution of the decree also. We do not pay any court-fee for execution of a decree. As a matter of fact, it is only an ordinary petition. As I said elsewhere and as is put in a decision of the Privy Council, the difficulties of the plaintiff in India start after getting a decree. There is difficulty only in the execution of the decree, even in respect of compromise decrees. The very interpretation of the decree gives rise to difficulties. The execution of the decree gives rise to further difficulties. This is also the case with reference to arbitration cases. The matter does not end with the passing of an award. That is why we have recognized in clause 69 only certain categories of cases wherein the court will have nothing more to do with the cases. They are closed once and for all. But the categories of cases referred to by the hon. Member will really give greater trouble at later stages. Therefore it will not be possible to extend that principle to all cases. We have just made a beginning. Let us see how this works. Perhaps later on we may consider other cases also.”

SRI K. BALASUBRAMANYA AYYAR :—“ Sir, so far as the execution of the court decree is concerned, we do not increase the court-fee on account of the difficulties involved in the execution of the decrees. If, in a particular case, the litigant is put to lot of difficulties, do the Government increase the court-fee payable in such cases? No. With the passing of the decree, one stage is over and execution of the decree is the next stage. It is only an ordinary petition presented with a fee of Rs. 2 for the execution of the decree. Whether there are difficulties in the execution of the decree or not, it does not matter. Therefore that argument should not be put forward here where the court has not spent much time over the whole question, where the suit is decreed *ex parte*, or compromised or withdrawn or referred to arbitration before evidence has been recorded on the merits of the case. In the case of the *ex parte* decree, it takes only two minutes for the Judge. In the case of compromise suits also, it does not take much time. The Judge does not even write the decree. It is written by the clerk. The Judge merely signs. (Interruption.) That is your fault and not the fault of the parties. The time factor in these cases is very important. Therefore, I ask why should not Government refund half of the court-fee paid in these cases? ”

THE HON. SRI C. SUBRAMANIAM :—“ I am not accepting the amendments, Sir.”

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MR. CHAIRMAN :—" The question is—

'Add the following before the Explanation :—

"Where any suit is decreed *ex parte* or compromised or withdrawn or referred to arbitration before evidence has been recorded on the merits of the claim, half the amount of all fees paid in respect of the claim or claims of the suit shall be ordered by the court to be refunded to the parties, by whom the same have been respectively paid." "

The amendment was lost.

Clause 69 was put and carried.

Clauses 70 to 81 were put and carried.

Clause 82.

SRI K. BALASUBRAMANYA AYYAR :—" Sir, rules may be placed before this House also." 4-10 p.m.

THE HON. SRI C. SUBRAMANIAM :—" Yes, Sir, I give the assurance that they will be placed here also."

MR. CHAIRMAN :—" Is the hon. Member not moving his amendment? "

SRI K. BALASUBRAMANYA AYYAR :—" I am not moving it."

Clause 82 was put and carried.

Clauses 83 to 87 were put and carried.

#### SCHEDULE I.

SRI K. BALASUBRAMANYA AYYAR :—" Sir, I move the amendments standing in my name, namely :—

'In Article 1 (i), for the word " six ", substitute the word " two ".

For the existing Article 1 (iii), substitute the following :—

"(iii) exceeds one hundred rupees, Six annas.  
for every ten rupees or part thereof in excess of one hundred rupees up to one thousand rupees.

(iv) exceeds one thousand rupees Twelve annas."  
for every ten rupees or part thereof.

I agree that the rate of 7½ per cent *ad valorem* is a very reasonable rate and I do not question it at all. But so far as cases of a small cause nature are concerned, this rate should be reduced a little. For a suit valued at Rs. 500 why should a poor litigant be asked to pay six annas? After all, he has to pay lawyer's fee and other fees. I hope the Government will look into that aspect of the matter."



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SRI MOHAMED RAZA KHAN :—“ Sir, I second the amendments.”

THE HON. SRI C. SUBRAMANIAM :—“ No principle is involved in it. The reduction suggested is very drastic—from six annas to two annas, that is, one-third court-fee. I do not think that we are justified in reducing it to that extent. After all, we are just abolishing the distinction between a smaller suit and a higher suit and we are adopting a uniform scale of fee. It will give room for agitation if it should be brought down to that level. Having adopted the 7½ per cent rate, let us stick to it throughout.”

MR. CHAIRMAN :—“ The question is—

‘ In Article (1) (i), for the word “ six ”, substitute the word “ two ”. -

For the existing Article 1 (iii), substitute the following :—

“(iii) exceeds one hundred rupees : Six annas  
for every ten rupees of part  
thereof in excess of one  
hundred rupees up to one  
thousand rupees.

(iv) exceeds one thousand rupees : Twelve annas.  
for every ten rupees or part  
thereof.

The amendments were lost.

Schedule I was put and carried.

Schedules II and III were put and carried.

Clause 1 was put and carried.

The Preamble was put and carried.

THE HON. SRI C. SUBRAMANIAM :—“ Sir, I move—

*That the Madras Court Fees and Suits Valuation Bill, 1954 (L.A. Bill No. 25 of 1954), as passed by the Assembly, be passed.*”

I do not think that I need make any speech now as all the points have been thrashed out. I am sure when the Act is worked it will be a simpler measure and there will be less hardship as far as litigants are concerned. If there is really any difficulty, certainly we will take note of it and take further action. As far as possible we will try to improve the present measure and, I think, we have really made an improvement. I hope the Bill will be passed unanimously.”

MR. CHAIRMAN :—“ The question is—

*That the Madras Court Fees and Suits Valuation Bill, 1954 (L.A. Bill No. 25 of 1954), as passed by the Assembly, be passed.*”

The motion was carried and the Bill was passed.

MR. CHAIRMAN :—“ The House now stands adjourned *sine die*.”

The House then adjourned *sine die*.